

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Marie

FILED

NOV 03 2010

[Signature]
CLERK

UNITED STATES OF AMERICA,

CR 10-40047

Plaintiff,

v.

DEFENDANT'S PROPOSED JURY
INSTRUCTIONS

GUILLERMO ORTIZ, a/k/a "Memo",

Defendant.

COMES NOW Defendant Guillermo Ortiz, by and through his attorney of record, and
submits the attached proposed jury instructions for the Court's consideration.

Dated this 3rd day of November, 2010.

MEIERHENRY SARGENT, LLP

/s/ Clint Sargent

Clint Sargent

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Attorney for the Defendant

DEFENDANT ORTIZ'S PROPOSED JURY INSTRUCTION NO. 1
Single/Multiple Conspiracies

added

(1) The indictment charges that the defendant was a member of one single continuing conspiracy to commit the crime of conspiracy to distribute methamphetamine.

(2) One of the issues you must decide is whether there were really two or more separate conspiracies -- one between Guillermo Ortiz, Carlos Clemente Perez Panteleon, Jose Rodriguez Narez and Renee Ronsberg to commit the crime of conspiracy to distribute methamphetamine, another between Guillermo Ortiz and Dustin Call to commit the crime of conspiracy to distribute methamphetamine, and another between Guillermo Ortiz, Juan Maldonado, Troy Rubin, Shelly Bryan, Myles Sandquist, David Dale and Shea Reiners to commit the crime of conspiracy to distribute methamphetamine.

(3) The Government must convince you beyond a reasonable doubt that the defendant was a member of the single continuing conspiracy charged in the indictment. If the Government fails to prove this, then you must find that defendant not guilty of the conspiracy charge, even if you find that he was a member of some other conspiracy. Proof that a defendant was a member of some other conspiracy is not enough to convict.

(4) But proof that a defendant was a member of some other conspiracy would not prevent you from returning a guilty verdict, if the Government also proved that he was a member of the conspiracy charged in the indictment.

Eighth Circuit Model Pattern Jury Instruction Criminal § 5.06G

Refused
11/3/10
John B. Jones
kg

DEFENDANT ORTIZ'S PROPOSED JURY INSTRUCTION NO. 2
Single/Multiple Conspiracies

You have heard evidence that the defendant was involved with certain persons in the distribution of methamphetamine both before and after he went to prison in 2006. Even if you find beyond a reasonable doubt that some of the same persons were involved in the distribution of methamphetamine after the defendant's release from prison, as were involved before he went to prison, in order to convict, you must find beyond a reasonable doubt that the activity the defendant participated in was undertaken pursuant to an agreement in 2005. That is to say that it was a continuation of the unlawful agreement made in 2005 and not a new unlawful agreement made sometime after the defendant's release from prison in 2007.

While the indictment charges that the conspiracy existed between 2005 and 2010, it is not essential that the Government prove the conspiracy started and ended precisely on those dates. It is sufficient if you find beyond a reasonable doubt that, in fact, a conspiracy was formed and existed continuously between the dates reasonable near those alleged in the indictment as the beginning and ending dates.

Moreover, if you find that a drug conspiracy existed in 2005, but ended when the defendant went to prison, then you must find the defendant not guilty. This is so even were you to find that a new conspiracy was formed when he was released from prison in 2007.

United States v. Traitz, 2002 WL 31681967 (E.D.Pa.)(instruction given by the court)

Referred
11/3/10
John B. Jones
Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served by electronic filing upon:

John Haak
john.haak@usdoj.gov

Dated this 3rd day of November, 2010.

MEIERHENRY SARGENT, LLP

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